IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/07/2002

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THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Second Appeal No.1572 of 1989

H. Kharak Bahadur Thapa .. Appellant

-Vs-

1. The Union of India rep. by
the Secretary to Government
Department of Post & Telegraph
New Delhi.

2. The Presidency Post Master
Madras G.P.O., Madras-1. .. Respondents

Appeal against the judgment and decree dated 6.4.1988 made in A.S. No.723 of 1987 on the file of XI Additional Judge, City Civil Court, Madras, against the judgment and decree dated 7.11.1986 made in O.S.No.5078 of 1985 on the file of the II Assistant Judge, City Civil Court, Madras.

!For Appellant : Mr.K.V. Prakash

^For Respondents : Mr.R. Santhanam, Sr.C.G.S.C.

:J U D G M E N T

The appellant is the plaintiff in O.S.No.5078 of 1985 on the file of the learned II Assistant Judge, City Civil Court, Madras.

2. The appellant/plaintiff filed the above suit for recovery of a sum of Rs.3,100/- alleging that when he was working as a Watchman in the State Trading Corporation of India Ltd., Madras, he sent 16 hundred rupee notes valuing Rs.1,600/- and 15 hundred rupee notes valuing Rs.1,500/- in two registered insured covers, to his wife Smt. Tikimaya Devi Thapa, who is living at West Nepal, from the G.P.O., Madras, and when the said covers were opened, only newspapers cuttings were found, but not currency notes.

3. The suit was resisted by the respondents/defendants contending that even though two insured letters were alleged to have been sent by the appellant/plaintiff were received in good condition with " Lahaseal" intact

and forwarded to the addressee - the wife of the appellant/plaintiff, who received the covers without any tampering, she found only pieces of Indian newspapers inside the covers and therefore, they contended that as the seal was intact at the time of handing the postal articles to the addressee, they are not liable to pay the sum of Rs.3,100/-.

4. Upon the above rival contentions, the learned trial Court Judge, framed the following issues:
(i) Whether the disturbed postal articles were not in the course of transmission by post?
(ii) Whether the plaintiff is not entitled for the amount claimed?

5. While the appellant/plaintiff examined himself as PW1 and marked 19 documents as exhibits A1 to A19, of which, A1 dated 10.6.1983 is the original receipt issued by the respondents/defendants to the appellant/plaintiff, for insuring two covers, the respondents/defendants examined one Jayaraj, an Assistant working in the office of the second respondent/defendant, who marked exhibit B1 dated 26.8.1983 to show that they received a letter from the Western Regional Postal Directorate, Government of Nepal to the respondents/defendants stating that the appellant/ plaintiff's wife received only Indian newspapers in the insured covers.

6. Accepting the oral and documentary evidence, the learned trial Judge decreed the suit. Aggrieved by which, the respondents/ defendants preferred an appeal in A.S.No.723 of 1987 on the file of XI Additional Judge, City Civil Court, Madras, who, by decree and judgment dated 6.4.1988 reversed the decree and judgment of the trial Court and allowed the appeal. Hence, the above second appeal admitted on the following substantial questions of law.
(a) Whether the Lower appellate Court misconstrued or omitted to construe the material evidence on record when it chose to reverse the judgment and decree of the first Court?
(b) Whether the lower appellate Court properly construed the provisions of the Indian Post Office Act while reversing the judgment and decree of the first Court?

7. The learned counsel for the appellant/plaintiff reiterated the submissions that were made before the Courts below.

8. I have carefully perused the relevant pleadings and evidence on record and the judgment and decree of the Courts below.

9. In this regard, I am obliged to refer Sections 30 and 33 of the Indian Post Office Act, which reads as under.
Section 30:
Insurance of postal articles.- The Central Government may, by notification in the Official Gazette, direct -
(a) that any postal article may, subject to the other provisions of this Act, be insured at the post office at which it is posted, against the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it; and

(b) that, in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the insurance of postal articles."

Section 33:
Liability in respect of postal articles insured.- Subject to such conditions and restrictions as the Central Government may, by rule, prescribe, the Central Government shall be liable to pay compensation not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:
Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused."

10. A careful reading of Section 33 of the Act makes it clear that the liability of the Post Office, a department of the State, is only with regard to the loss of article insured or the damage caused to the article insured in transit. But, in the instant case, there are material evidence available on record that the article insured was delivered in tact to the addressee. On the other hand, even though the appellant/plaintiff pleaded that he had sent 16 hundred rupee notes and 15 hundred rupee notes, valuing Rs.1,600/- and Rs.1,500/- respectively, in two registered insured covers, there was absolutely no evidence before the Courts below to prove that the appellant/plaintiff had kept the said currency notes in the registered insured covers, before they were sealed. The mere insurance of the covers nor the receipt issued by the second respondent/defendant for insuring the said covers, may not, by itself, be sufficient for the appellant/plaintiff to discharge his burden that he had sent the currency notes in the insured covers. Therefore, the appellate Court has not misconstrued or omitted to consider the material evidence on record, when he chose to reverse the decree and judgment of the trial Court, nor the lower Appellate Court failed to consider the provision of Indian Post Office Act properly, while reversing the judgment and decree of the trial Court. Hence, I am of the considered opinion that the appellant/plaintiff is not entitled to the relief as prayed f or, as rightly held by the learned appellate Judge. Accordingly, the substantial question of law is answered in negative.

In the result, the second appeal is dismissed. No costs.

10.7.2002.
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To
The Registrar
City Civil Court
Madras (with records).

P.D. DINAKARAN, J.

S.A.No.1572 of 1989.